

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
SEP 28 2007

GERALD MILLER,

Petitioner,

-vs-

DOUGLAS WEBER,

Warden, SD State Penitentiary,

Respondent.

CIV 06-4083

ORDER

CLERK


Petitioner brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge issued a Report and Recommendation recommending that the petition be dismissed with prejudice because petitioner's claims are untimely. Petitioner filed no objections to the Report and Recommendation.

After conducting an independent review of the record, the Court agrees with the Magistrate Judge. Accordingly, IT IS ORDERED that:

1. The Report and Recommendation is ADOPTED.
2. Petitioner's application for writ of habeas corpus (Doc. 1) is DENIED, with prejudice.
3. No certificate of appealability shall issue.
4. Respondent's Motion to Dismiss (Doc. 16) is GRANTED.

Dated this 28th day of September, 2007.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

By: Shelly Margulies, Deputy
(SEAL)